86-359

No. _____

Supreme Court, U.S.
FILED
SEP 3 1986
JOSEPH F. SPANIOL, JR.
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER 1986 TERM

ARISTIDES CASTRO GONZALEZ

APPELLANT

VS.

THE COMMONWEALTH OF PUERTO RICO
BANCO DE PONCE
CONTINENTAL CASUALTY OF PUERTO RICO
CNA CASUALTY OF PUERTO RICO

APPELLEES

ON APPEAL FROM THE SUPREME COURT
OF THE COMMONWEALTH OF PUERTO RICO

JURISDICTIONAL STATEMENT

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Attorney for petitioner

25pp

I QUESTION PRESENTED ON APPEAL

A real property is to be sold at public auction. The owner is not notified of the sale, it's date, time or place, and the law of Puerto Rico does not require such notification. The owner contends that the lack of notification deprived him of his property in violation of his constitutional right to due process of law. The Commonwealth of Puerto Rico and the buyer of the property contend that the public auction was conducted according to the laws of Puerto Rico; that the personal non-notification to the owner of the pending sale and the lack of a legal requirement for personal notification do not violate the right to due process.

The question here presented is whether the law of the Commonwealth of Puerto Rico which governs the sale of real property at public auction is in violation of the Constitution of the United States.

II PARTIES

All the parties to the proceeding in court are named in the case caption.

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Commonwealth of Puerto Rico
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IV TABLE OF AUTHORITIES

Cases, Constitutional Provisions and Statutes

1. Mennonite Board of Missions vs. Richard C. Adams
   103 S Ct 2706, 462 US 791, 77 L Ed 2° 180, (1983)
2. United States Constitution 5° Amendment
3. Rules of Civil Procedure for the General Court of Justice, Appendix III of Title 32 of the Laws of Puerto Rico, 1979.

V REFERENCE TO OPINIONS IN COURTS BELOW

This case was originally heard in the Superior Court of Puerto Rico, San Juan, in Case No. 85-5544. By Judgement 14 March 1986 the Court dismissed the complaint in that case. On 3 April 1986 the same Court denied

Reconsideration on the specific constitutional issue of due process.

On 16 April 1986, petitioner filed a Petition for Revision before the Supreme Court of the Commonwealth of Puerto Rico, Case No. RE-86-182.

On 8 May 1986 the Supreme Court of Puerto Rico dismissed the Petition for Revision.

On 5 June 1986 the Supreme Court of Puerto Rico denied a Motion for Reconsideration on the specific constitutional issue.

VI GROUNDS FOR JURISDICTION

In this case appellant Aristides Castro Gonzalez challenges the validity of the sale of his property at public auction, contending that by not requiring that he be notified of the impending sale, the state marshall in conducting the public auction violated appellant's right to due process of law.

BEST

The Supreme Court of Puerto Rico denied appellant's claim of 16 April 1986 on 8 May 1986, Reconsideration denied on 5 June 1986. This is a final decision by the Supreme Court of Puerto Rico denying a claim that a specific law of Puerto Rico contains a provision repugnant to the Constitution of the United States. The Supreme Court of the United States has jurisdiction to hear this case on direct appeal under 28 USC 1258.

VII CONSTITUTIONAL PROVISIONS AND STATUTES

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual Service in time of War or public danger; now shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty of property, without due process of law; nor shall private property be taken for public

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use, without just compensation.
5° Amendment to the Constitution of the United States.

Rule 51.8 Judicial Sales (a) Notice of sale. Before the sale of a property on execution is held, notice thereof shall be published during two (2) weeks by posting written notice in three public places of the municipality where the sale is to be held, such as the city hall, the court and the collector's office. Said notice shall be posted also at the collector's office and at the public school of the place where defendant has his residence, if it is known, or in one of the newspapers of general circulation in the Commonwealth of PUerto Rico, during two (2) weeks, and at least once a week. The notice of sale shall adequately describe the property on sale, indicating the place, day and time when the sale is to be held. If the property is perishable the court may, on motion of party, reduce the term for posting the notice of sale to less than two (2) weeks. All judicial sales which do not comply with the notice of sale requirement shall be null, without prejudice to the liability of the party who made the sale without complying with said notice.
Rules of Civil Procedure, Proceedings after Judgement, Title 32, Laws of the Commonwealth of Puerto Rico

VIII STATEMENT OF THE CASE

Since 1967, plaintiff/appellant Aristides Castro Gonzalez has owned development land in Cupey Alto, Puerto Rico of approximately 3.4 acres.

In 1980 Castro filed suit in Puerto Rico Superior Court against the Puerto Rico Public Building Authority for damages to him caused by the Authority in a contract controversy; Castro builds schools on contract. In 1984, the Court awarded to Castro $39,000 in judgement to Castro in his favor and against the Authority.

Almost immediately, Continental Casualty of Puerto Rico (Continental) filed a claim on the $39,000 award, asking the whole amount in partial satisfaction of a judgement they had against Castro and in favor of Continental for a 1978 case of construction financing where Continental held a bond for Castro.

In discussing the claim with Continental and its affiliate, CNA Casualty of Puerto Rico (CNA), Castro learned for the first time, December 1984, that his land in Cupey Alto had been sold at public auction to these same insurance companies who had held his policies, in October 1980.

In February 1985, Castro filed in the Public Building Authority case a motion to nullify the public sale of his land claiming that the State and the insurance companies had violated due process.

The Court decided that "...this is not the proper forum to judge any defect...in the public Auction." 22 May 1985.

Castro then filed the root case of this appeal, Case 85-5544, in Puerto Rico Superior Court against the same defendants - the Commonwealth of Puerto Rico, Banco de Ponce, Continental Casualty of Puerto Rico and CNA Casualty of Puerto Rico - asking the Court

to declare null the sale of his land at Public Auction because he, the owner, was not notified of the pending sale and that this lack of personal notification violated his contitutional right to due process of law.

Superior Court dismissed this claim in March 1986 on the basis that the sale of land at public auction in Puerto Rico is governed by Rule 51 of the Puerto Rico Rules of Civil Procedure, that Rule 51 does not require personal notification and that his claim of nullity of sale was therefore without merit.

Castro filed reconsideration on 31 March 1986, pointing out that the cited jurisprudence, Mennonite Board of Missions vs. Adams, 103 S Ct 2706, required personal notification. Superior Court denied this motion of reconsideration.

Castro filed a Petition for Revision of the Superior Court decision with the Supreme Court of the Commonwealth of Puerto Rico, Case NO. RE-86-192. This Petition was denied by the Supreme Court on 8 May 1986. Castro filed for reconsideration, pointing out that the standard for notification set out in Mennonite Mission Board, supra, must be met, that Rule 51 did not comply with that standard to that extent, thus Rule 51 must be declared unconstitutional because it is in violation of both the Puerto Rico and United States Constitutions. Reconsideration was denied by the Supreme Court of Puerto Rico on 5 June 1986.

Notice of Appeal was filed with the Supreme Court of Puerto Rico on 22 August 1986 and all parties were served with this notice.

IX STATEMENT OF REASONS TO BE HEARD

This case treats of severe economic damage, of deprivation of property, in violation of determined standards of due process of law. Not only has the appellant been deprived of property, he is adjudged to have no recourse in law because the law of Puerto Rico does not require that the constitutional standard be met; the law of Puerto Rico that sets notification standards for the sale of land at public auction does not require personal notification, and that's that.

Constitutional rights must be the same for all citizens, no state laws can alter these rights. In this case the law of Puerto Rico denies a right that the United States Supreme Court has decided must be upheld. Equal justice for all the citizens of Puerto Rico demands that this controversy over a fundamental right be aired before and decided by the Supreme Court of the United States.

This Jurisdictional Statement is most respectfully submitted today, the 2° day of September 1986 from San Juan, Puerto Rico.

Robert J. Walser
attorney for the appellant
GPO Box AL
San Juan, Puerto Rico
00936
(809)722-0111

Certificate of Service I, Robert J. Walser, attorney for the appellant, certify that I have today sent by first class pre-paid mail three copies each of this Jurisdictional Statement to the counsel of record of each party, as follows:

Laura Ydrach Vivona
Apt. 192
San Juan, PR 00902
(representing Puerto Rico)

Alex Gonzalez
Edif. Banco de Ponce
Hato Rey, PR 00918
(representing CNA and Continental)

Luis Dubon III
Banco de Ponce
Hato Rey, PR 00918
(representing Banco de Ponce)

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IN THE SUPREME COURT OF PUERTO RICO

Aristides Castro Gonzalez
Plaintiff/Appellant

vs

Case No.

Commonwealth of Puerto Rico, et al
Defendants/Appellees

RE-86-182

RESOLUTION

To this solicitation for revision, DENIED

Thus decided the Court, certified by the Secretary, Interim.

(signed)
Heriberto Perez-Ruiz
Secretary Interim

San Juan, Puerto Rico, 8 May 1986

IN THE SUPREME COURT OF PUERTO RICO

Aristides Castro Gonzalez
Plaintiff/Appellant

vs

Case No.
RE-86-182

Commonwealth of Puerto Rico,
et al
Defendants/Appellees

RESOLUTION

San Juan, Puerto Rico, 5 June 1986

As to the Motion for Reconsideration, DENIED.

Thus Decided the Court, certified by the Secretary General, interim. Justice Mr. Rebollo Lopez would reconsider.

(signed)
Heriberto Perez-Ruiz
Secretary General,
Interim

IN THE SUPERIOR COURT OF PUERTO RICO
COURTROOM OF SAN JUAN

Aristides Castro Gonzalez Plaintiff	*	
vs.	*	CIVIL NO.
Commonwealth of Puerto Rico Banco de Ponce CNA of Puerto Rico, Inc. Continental Casualty of Puerto Rico, Inc. Defendants	*	85-5544(905)

* * * * * * * * * * * * * * *

JUDGEMENT

This case concerns a civil complaint filed by Aristides Castro Gonzalez, engineer, against various parties, where it is alleged in essence that the ordinary procédure to execute judgement by means of the sale at public auction of a plot of land containing 13,329 meters, located in Cupey Alto, Puerto Rico, that was the property of Engineer Castro Gonzalez. He claims that the sale in public auction is mull because allegedly he was not served personally with the notice of aucution and that, in his

opinion, infringes on due process of law. Answering the complaint by all the parties, The Commonwealth of Puerto Rico filed a Motion for Dismissal and the court scheduled the same for hearing, together with the affirmative defenses raised by the other parties in their respective answers to the Complaint that it does not present a cause of action.

At the hearing the parties appeared properly represented and argued in support of their respective contentions. The court has analyzed carefully the parties and concluded that there has not been such failure to comply and for this reason dismisses the complaint with regard to all of the parties.

We see as follows:

Engineer Aristides Castro Gonzalez and his wife were properly served in the three litigation that gave rise to the judge-

ments against them, to wit, 77-2028(807) CNA Casualty of Puerto Rico vs. Aristides Castro Gonzalez and others; 78-5380(807) Banco de Ponce vs Aristides Castro Gonzalez and his wife Aidee Piniero de Castro; 77-2063(807) Continental Casualty Co. vs Aristides Castro Gonzalez and others. In all of these cases appeared in representation of the defendants Attorney Raul Bocanega Saldana (may he rest in peace). Each of these cases produced a judgement in favor of the plaintiff and against the defendants, who were notified by the present plaintiff through attorney Raul Bocamegra Saldana after the filing officialy of the same.

To execute the judgement, Rule 51 of Civil Procedure was followed, publishing notices in the newspaper El Dia on 25 September and 2 October of 1980 repsectfully, according to the certification in the record

done by Carmen M. Hernandez, under affidavit No. 26934 of October 2, 1980. In the same manner, notices of the auction were posted in public places such as the tax offices of Rio Piedras, the municipality of Rio Piedras, the judicial center of Hato Rey and the city hall of San Juan on 30 September 1980, according to a sworn statement by Mr. Lorenzo Sanchez in affidavit no. 1379 of October 19, 1980 before public notary Luis M. Angelet Frau.

On October 3, 1980, attorney Angel Alvarez Perez sent a letter under receipt no. 8799239 to attorney Raul Bocanegra Saldana, where there was included a copy of the notice of auction to be carried out in execution of the judgement over the property before indicated.

Having complied with Rule 51 over execution, and specifically with Rule 51.8 over judicial sales, the court concludes that there does

not exist a reason to decree the nullity of the sale at public auction of the real property to which we have referred before, and there we must declare the case as presented to be dismissed.

The court has had the opportunity to examine the case cited by the legal representative of the plaintiff, Mennonite Board of Missions vs. adams, (1983) 103 S Ct 2706, and has resolved that it does not apply to the case under consideration. In the cited case we have an action under a specific law of the State of Indiana over the procedure to collect back taxes in accordance with the procedure to sell at public auction the property in question without giving notice to a mortgage holder with a legitimate interest that was properly registered.

To the contrary, the procedure impugned in this case is governed by the Rules of Civil Procedure and the defendant faithfully complied with the same.

The Court concludes that even considering most liberally in it's analysis and consideration of the arguments of the plaintiff, that the plaintiff is not able, in any manner, to perservere in his claim and that conforming to Figueroa Pineiro vs Mimida and Kguia (1961) 83 DPR 554, the complaint must be dismissed.

Conforming to this the Court dictates the following:

JUDGEMENT

Conforming to the facts of this case and the law and jurisprudence applicable, the Court declares the complaint WITHOUT MERIT, decreeing the dismissal of the same, with the imposition of cost of $500 for attorney's fees to satsify each of the parties defendant except for the Commonwealth of Puerto Rico.

REGISTERED AND NOTIFIED

GIVEN in San Juan, Puerto Rico on the 14th day of March 1986

(signed)
NELLIE ORTIZ TORRES
SUPERIOR JUDGE

IN THE SUPREME COURT OF THE COMMONWEALTH
OF PUERTO RICO

ARISTIDES CASTRO GONZALEZ Plaintiff/Apppellant	
vs.	Case NO.
COMMONWEALTH OF PUERTO RICO BANCO DE PONCE CNA OF PUERTO RICO, INC. CONTINENTAL CASUALTY OF PUERTO RICO	RE-86-192
Defendants/Appellees	

NOTICE OF APPEAL

TO THE HONORABLE COURT

comes the plaintiff/appellant in the captioned case, Aristides Castro Gonzalez, and notifies the Honorable Supreme Court of the Commonwealth of PUerto Rico of his appeal to the Supreme Court of the United States from the judgement of 8th May 1986 denying the petition for revision, and the judgement of 5 June 1986 denying the special reconsideration as to constitutionality of the law that specifies the disputed

procedure for public auction of real property.

This appeal is taken under 28 USC 1258(2).

Respectfully submitted this 22nd day of August 1986 in San Juan, PUerto Rico.

Robert J. Walser
attorney for appellant
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(809)722-0111

I certify that a copy of this notice of this notice of appeal has been sent by first class pre-paid mail to:Attorneys Laura Ydrach Vivoni, Apt. 192, San Juan Puerto Rico 00902 (representing the Commonwealth of Puerto Rico), Alex Gonzalez, Edif. Banco de Ponce 1901, Hato Rey, PR 00918 (representing CNA of Puerto Rico, Inc., and Continental Casualty of Puerto Rico, Inc.) and Luis Dubon III, Banco de Ponce Hato Rey, PR 00918 (representing Banco de Ponce.)

(signed)

Robert J. Walser